Rawlsian Institutionalism and Business Ethics: Does it Matter Whether Corporations are Part of the Basic Structure of Society?

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ABSTRACT: In this article, I aim to clarify some key issues in the ongoing debate about the relationship between Rawlsian political philosophy and business ethics. First, I discuss precisely what we ought to be asking when we consider whether corporations are part of the “basic structure of society.” I suggest that the relevant questions have been mischaracterized in much of the existing debate, and that some key distinctions have been overlooked. I then argue that although Rawlsian theory’s potential implications for business ethics are more extensive than some have suggested, the nature of the concern that we ought to have about the effects of corporate behavior on individuals’ economic and social conditions should lead us to reject the view that corporations are bound by principles of justice only if, and insofar as, they are part of the basic structure.

KEY WORDS: Corporations, Basic Structure of Society, Institutionalism, Justice, John Rawls

The behavior of corporations has profound effects on individuals’ economic and social conditions, their opportunities, and the quality of their lives more generally.¹ Because these effects are both pervasive and extensive, it is important to reflect on what the most plausible philosophical theories of justice might imply with respect to corporate behavior, broadly understood. There are many important questions that lie, in one sense or another, at the intersection of political philosophy and business ethics. Some of these questions are at least primarily about whether the state should implement certain policies or regulations, while others are primarily about what firms should themselves do given the legal framework within which they operate. Many important issues, however, generate questions at both levels. Consider, for example, the extent of the authority that higher-level employees are given over their subordinates within a firm determines how much, or how little, control employees have over precisely how they spend their working hours (Anderson, 2017). More generally, corporations control vast amounts of wealth, which can be employed in a wide variety of ways, each of which would have different and potentially significant effects on the opportunities of many people, as well as more direct effects on the conditions in which they live.

¹ For example, the extent of the authority that higher-level employees are given over their subordinates within a firm determines how much, or how little, control employees have over precisely how they spend their working hours (Anderson, 2017). More generally, corporations control vast amounts of wealth, which can be employed in a wide variety of ways, each of which would have different and potentially significant effects on the opportunities of many people, as well as more direct effects on the conditions in which they live.
example, the issue of to what extent firms resemble states in their morally relevant dimensions, and to what extent their internal governance ought to be guided by the same (democratic) principles that apply to the legitimate exercise of state authority (Anderson, 2017; Brenkert, 1992; Kolodny, 2017; Landemore & Ferreras, 2016; Moriarty, 2005a and 2010; Néron, 2015; Phillips & Margolis, 1999). With respect to this issue, we can ask both whether the state ought to mandate some degree of democratic governance within firms, and also what firms themselves should do with respect to their internal governance in conditions in which the state does not mandate anything in particular.²

The fact that many key normative questions about the behavior of corporations apply both to issues of state policy and directly to issues of firm behavior suggests, at the very least, that there is not a clear distinction that can be drawn between issues of social justice and issues of business ethics. And this suggests that political philosophy and business ethics must be thought of as at least substantially overlapping areas of normative inquiry (Heath, Moriarty & Norman, 2010; Martin, 2013; Moriarty, 2005; Norman, 2011 and 2014; Rönnegard & Smith, 2013).

Unsurprisingly, much of the work that has been done by business ethicists that either engages with issues in political philosophy directly, or draws on work in political philosophy to inform normative analyses of corporate behavior, has focused on John Rawls’s influential theory of justice.³ Recently, a number of scholars have discussed what Rawlsian theory might imply

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² Other important examples of questions that apply, in some sense, at both levels include whether justice requires that individuals are provided with opportunities for meaningful work (Arneson, 1987 and 2009; Hsieh, 2008 and 2009a; Keat, 2009; Moriarty, 2009; Hasan, 2015), and whether principles of distributive justice of the kind that apply at the level of society at large also apply within firms (Moriarty, 2005b; Lindblom, 2011; Arnold, 2012; Kates, 2019).

³Some important early contributions employ versions of Rawlsian devices such as the original position and the associated veil of ignorance (Rawls, 1999) in order to consider how corporate actors are obligated to behave, without treating the arguments as, strictly speaking, applications of Rawls’s theory of justice. Examples include early contributions to the social contract approach to business ethics, such as Donaldson (1982), as well as
with respect to some central questions in business ethics, and whether we should be satisfied with its implications. Since Rawls held that the principles of justice apply only to the institutions of the “basic structure of society,” and not to the conduct of individuals or private associations within that structure (Rawls, 1999: 6-9, 47 and 1993: 268-269), the senses in which, and the extent to which, his theory can be thought to have implications for business ethics depends primarily on whether, and if so in what respects, corporations can be thought to be part of the basic structure (Blanc & Al-Amoudi, 2013: 502-511; Singer, 2015: 75-82).

My central aim in this article is to argue that the nature of the concern that we ought to have about the effects of corporate behavior on individuals’ economic and social conditions and opportunities should lead us to reject the Rawlsian view that corporations are bound by principles of justice only if, and insofar as, they are part of the basic structure. Instead, we should accept that, in principle, corporations have reasons of justice to directly promote the aims that principles of justice prescribe for the institutions of the basic structure, and that therefore they are directly bound by the principles of justice.

Before making this argument, however, it is important to give Rawlsian theory its due. In order to do this, it is essential to clarify precisely what, from a Rawlsian perspective, we ought to be asking when we consider whether corporations are part of the basic structure. In my view, the

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Donaldson’s later work with Dunfee (Donaldson & Dunfee, 1994, 1995, and 1999), which has affinities with Rawls’s turn to political liberalism in his later work (Rawls, 1993). Some early work on stakeholder theory, such as Freeman (1994) and (2001), also draws on Rawlsian ideas, as does Hartman (1996); for critical discussion, see Phillips and Margolis (1999: 625-626), and for a response see Hartman (2001). For a more general critical discussion of appeals to Rawls in business ethics, see Marens (2014).

4 Examples include Hsieh (2004), (2005), (2009a), (2009b) and (2009c); Moriarty (2005); O’Neill (2008); Cohen (2010); Heath, Moriarty, and Norman (2010); Blanc and Al-Amoudi (2013); Singer (2015) and (2018); Norman (2015); Blanc (2016); Welch and Ly (2017). For a helpful recent discussion that connects some of this recent work on the relationship between Rawlsian theory and business ethics to other recent developments in business ethics scholarship, see Smith (2018).

5 Precisely the kind of concern that I will describe has motivated at least some of the recent attempts to draw on Rawlsian theory to address issues in business ethics (e.g. Blanc & Al-Amoudi, 2013)

6 For arguments of a broadly similar kind that focus on individuals rather than corporations, see Murphy (1998); Cohen (2000) and (2008); Berkey (2015), (2016), and (2018).
relevant questions have been mischaracterized in much of the existing debate, and some key
distinctions have been overlooked, with the result that there is a fair bit of confusion about which
questions Rawlsian theory might provide an answer (plausible or not) to, and which questions
lie, as a matter of principle, beyond its scope. I will suggest that Rawlsian theory’s potential
implications for business ethics are more extensive than some (e.g. Singer, 2015) have
suggested, despite being less than fully adequate.

I will proceed in the remainder of the article as follows. In section 1, I will describe the
structure and central features of Rawls’s “Institutionalism” about justice (Berkey, 2015, 2016,
and 2018; Heath, Moriarty, & Norman, 2010: 432), that is, his view that the principles of justice
apply only to the institutions of the basic structure of society. In section 2 I will discuss the
implications of this Institutionalism for our thinking about the place of corporations within
Rawlsian theory. I will argue that two recent and important views, defended by Abraham Singer
(2015) and Sandrine Blanc and Ismael Al-Amoudi (2013), respectively, each distinguish
questions that are about the content of the basic structure from those that are not in conceptually
problematic and therefore at least somewhat misleading ways. I will then, in section 3, describe
how we should think about what Rawlsian theory implies with respect to corporate behavior. I
will note in particular that while the answers to many questions about which policy choices
Rawlsian theory supports depend on empirical matters, no empirical facts can affect whether a
particular policy choice is a choice about the content of the basic structure.7 Finally, in section 4
I will argue that once we recognize both the fundamental grounds on which we are legitimately
concerned about the effects of corporate behavior on individuals’ social and economic

7 More specifically, I will argue that many more policy choices than Singer’s (2015) interpretation allows
are such that how they should be made depends on empirical matters, and that, contrary to Blanc and Al-Amoudi’s
(2013) view, changes in empirical conditions cannot make a particular policy issue that previously was not a basic
structural matter into one that is a basic structural matter.
conditions, and the limits on what Rawlsians can plausibly count as part of the basic structure, the Institutionalist claim that the principles of justice apply only to the institutions of the basic structure appears implausible. The fact that corporations can directly and profoundly influence individuals’ opportunities, quality of life, and other justice-relevant values, I will argue, provides grounds for concluding that the principles of justice apply directly to their behavior. Whether and in what sense they can be thought to be part of the Rawlsian basic structure simply does not matter.

1. RAWLSIAN INSTITUTIONALISM

Institutionalism about justice (hereafter simply Institutionalism) is the view that the correct principles of justice, whatever they are,⁸ apply directly to the institutions of the basic structure of society, but do not apply directly to the conduct of individuals and private associations within that structure. Since the basic structure is not itself an agent to which normative principles can apply in the familiar sense that agents subject to them must act in accordance with their prescriptions, the central Institutionalist claim requires a bit of interpretation. What Rawls and other Institutionalists appear to have in mind is, roughly, that the aims prescribed by the principles of justice (e.g. ensuring the protection of equal basic liberties, and/or maximizing the prospects of the worst off members of society) must guide the process of structuring the institutions that make up the basic structure, as well as the policies and practices of those institutions (Berkey, 2016: 707). One implication of this for individuals and other possible

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⁸ Rawls, of course, holds that his well known two principles of justice are the ones that apply to the institutions of the basic structure. These principles are: (1) “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others”; and (2) “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all” (Rawls, 1999: 53).
subjects of obligations of justice (such as private associations) is that whenever they are acting as occupants of roles within a basic structural institution, they are obligated, as a matter of justice, to be guided by the aims prescribed by the principles of justice. In addition they are also obligated to be guided by these aims when they are involved in decision-making that will affect the makeup of a basic structural institution, or are acting in a way that will (or perhaps merely could) have effects on such an institution or set of institutions (e.g. voting). On the other hand, when agents are acting within the constraints determined by the existing basic structure, and when their actions will have no effects on the makeup of that structure, Institutionalism entails that they are not bound by any justice-based obligations to be guided by these aims.⁹

Rawls’s brief description of the content of what he calls the “natural duty of justice” (Rawls, 1999: 99-100), which, on his view, generates the subset of individuals’ duties of justice that are not grounded in their voluntary actions,¹⁰ is consistent with this understanding of Institutionalism. In addition to requiring that we comply with the rules of just institutions, the natural duty of justice, according to Rawls, requires that we “further just arrangements not yet established, at least when this can be done without too much cost to ourselves” (Rawls, 1999: 99). The idea here is that what justice requires of individuals is limited to compliance with just institutions and (not too costly) contributions to creating just institutions where they do not already exist (e.g. by reforming unjust institutions). It does not require direct promotion of the aims prescribed by the principles of justice. Duties of justice, on this view, are always ultimately explained by a concern for just institutions – we are obligated to respect such institutions by

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⁹ This is, in principle, consistent with thinking that agents at least sometimes have non-justice-based obligations to be guided by those aims (Daniels, 2003), although at least many Institutionalists would be resistant to the view that this is generally the case; for discussion see Berkey (2015: 862).

¹⁰ Duties of justice that are grounded in individuals voluntary actions fall under what Rawls calls the “principle of fairness” (Rawls, 1999: 93-97).
complying with their rules and regulations, and to aim to bring them about when they are not already in place. As Liam Murphy puts it, on an Institutionalist view such as Rawls’s, “in a fundamental way, institutions are what normative political theory is all about” (Murphy, 1998: 252).

The structure of Institutionalist views can be seen more clearly by noting what they imply about individuals’ obligations with respect to distributive justice in a society that lacks a just basic structure. Consider the following example:

Carly is a well off person in a society that counts as substantially unjust on any plausible view about what justice requires. Her annual income is $400,000, and the effective tax rate on that income is significantly less than it would be if the basic structure were just (or even merely less unjust). More specifically, she currently pays about $90,000 per year in federal, state, and local taxes after taking advantage of the many tax breaks that are available to people like her. It is clear that just institutions would tax her at least $40,000 more than she is in fact taxed, and would use the additional revenue obtained from taxing people like her at a higher rate to improve the prospects of society’s worst off members (by, for example, improving educational opportunities in poorer areas, or simply redistributing income), who typically live on less than $10,000 per year.

Rawls’s natural duty of justice implies that Carly is obligated to contribute to bringing about changes in the institutions of her society in the direction of justice. Specifically, she is

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11 Institutionalists generally endorse at least some version of the natural duty of justice. Indeed, without individual obligations to contribute to bringing about just institutions, they cold not make sense of the collective requirement to replace injustice with justice (Berkey, 2016: 726).
obligated to vote for candidates for office who support raising her taxes, or, if possible, to vote directly for an increase in her taxes. She might also be obligated to contribute some time and/or money to efforts to change her society’s tax laws so as to make them just, or at least less unjust. For Rawls, as well as most other Institutionalists, this latter obligation will not require her to make very large sacrifices (it will not require her, for example, to donate $40,000 to a campaign to raise taxes on the well off). What Carly is not obligated to do, as a matter of justice, on an Institutionalist view, is to voluntarily redirect the $40,000 that just institutions would tax her, or any portion thereof, in ways that would benefit those who are unjustly disadvantaged in her society. She is not obligated to do this even if the resources would do at least as much good for the worst off members of society as would be done if they were directed through the tax system.¹²

I suspect that the fact that Institutionalist views clearly imply that well off people are not obligated, as a matter of justice, to directly promote the aims prescribed by the principles of justice by, for example, directing a portion of their resources in ways that would benefit the worst off members of society, is a significant source of its widespread appeal (Berkey, 2016: 708; Julius, 2003: 326-327; Murphy, 1998: 288-289; Nagel, 1991: 53-54; Tan, 2004: 335).¹³ The theoretical and normative plausibility of this implication of Institutionalist views depends, at least in part, on the way in which Rawls and others combine the central Institutionalist claim, that the principles of justice apply to the institutions of the basic structure, but do not apply directly to the conduct of individuals and private associations, with a pure procedural account of

¹² For criticism of views with this structure, see Cohen (2000: 168-174); Porter (2009); Berkey (2016: 726-731). The main focus of Cohen’s discussion is the view articulated in Nagel (1975), which is consistent with, but does not depend on, Rawlsian Institutionalism.

¹³ As Liam Murphy puts it, Institutionalism is “very much the mainstream view” in contemporary political philosophy (1998: 252). Just a few of the many defenses of Institutionalism, primarily against arguments made against it by G.A. Cohen (2000) and (2008), include Williams (1998); Pogge (2000); Cohen (2002); Julius (2003); Tan (2004); Scheffler (2005) and (2006); Thomas (2011); Hodgson (2012); Melenovsky (2013); Schouten (2013).
distributive justice (Rawls, 1999: 74-77; Thomas, 2011; for critical discussion, see Berkey, 2015: 852-856, 866-869 and 2016: 716-718; Cohen, 2008: 126-127). As Rawls puts it, on a pure procedural account, “there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed” (Rawls, 1999: 75). With respect to distributive justice, the correct procedures, on Rawls’s view, consist in the proper functioning of a fully just set of basic structural institutions, plus full compliance among individuals and private associations with all of the rules and regulations imposed on them by these institutions.\textsuperscript{14}

This pure proceduralist account defines distributive justice in terms of the existence and operation of, plus full compliance with, a fully just set of basic structural institutions. Because of this, it implies that a distribution of resources is just only if it is the result of the operation of fully just institutions, plus full compliance by individuals and private associations with the rules of those institutions. In other words, it implies that being produced by the operation of a just basic structure is a necessary condition on the process by which a just distribution can be brought about (as is full compliance by individuals and private associations with the rules imposed by the basic structure).\textsuperscript{15} More importantly for my purposes, however, pure proceduralism also implies that nothing that individuals or private associations might do within the context of an unjust basic structure, apart from contributing to making that structure just (or at least less unjust), can reduce the extent to which the distribution of resources in society is unjust. Because distributive justice is defined in terms of the operation of just institutions, behavior that is independent of,

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\textsuperscript{14} For example, achieving distributive justice, on this type of view, requires both that a fully just set of tax laws are in place, and that the individuals and private associations subject to those laws fully comply with them.

\textsuperscript{15} See, for example, Rawls’s claim that “[a] fair distribution can be arrived at only by the actual working of a fair social process over time in the course of which, in accordance with publicly announced rules, entitlements are earned and honored” (1993: 282). For criticism of this claim, see Murphy (1998: 287).
and has no effect on, the relevant institutions, cannot affect it, either by making the resulting
distribution more unjust or less so. And because at least much of the behavior of individuals and
private associations in fact has no effect on basic structural institutions, this behavior cannot be
subject to principles of justice. After all, if, as a conceptual matter, the relevant behavior cannot
affect justice in any way, there is no basis upon which principles of justice might require
anything with respect to it.

Combining Institutionalism with pure proceduralism about distributive justice, then,
provides Institutionalists with a theoretical basis, grounded in a view about what justice is, for
the central Institutionalist claim. More generally, it provides the basis for the type of distinction
between the public and private spheres that Institutionalists accept, and for the view that only
what is done by agents acting in the former is directly relevant to justice. The public sphere, for
Institutionalists, consists of the institutions of basic structure plus the subset of the behavior of
individuals and private associations that is either carried out on behalf of, or stands to affect the
makeup of, one or more of those institutions. The private sphere, within which behavior is not
directly subject to the principles of justice, encompasses all of the conduct of individuals and
private associations that does not fall within the public sphere.

16 It is important to note that Institutionalism and pure proceduralism are, within the Rawlsian framework,
mutually supporting, consistent with Rawls’s method of reflective equilibrium (Rawls, 1999: 18, 42-44). In addition,
neither commitment, strictly speaking, entails the other. One could, in principle, accept Institutionalism but reject
pure proceduralism, for example by holding that distributive justice requires equal outcomes, but insisting that only
basic structural institutions must directly aim at such outcomes. And one could accept pure proceduralism but reject
Institutionalism, for example by holding that among the procedures that must be followed in order for a resulting
distribution to be just are some that individuals must follow directly in their economic decision-making. The reason
that Institutionalism and pure proceduralism are mutually reinforcing, then, is that views that include one but not the
other are generally implausible, despite being internally consistent. And at least one important reason that views that
include both, rather than neither, are widely endorsed is, it seems to me, that many find the implications of the
central Institutionalist claim for the justice-based obligations of individuals and private associations appealing.
2. CORPORATIONS AND THE BASIC STRUCTURE

Where do corporations fall within Rawlsian theory’s distinction between the public and the private spheres? In what sense, if any, are they part of the basic structure, and what are the implications for the application of principles of justice to corporate behavior?

On Rawls’s view, the institutions that make up the basic structure include “[t]he political constitution…the legally recognized forms of property, and the structure of the economy…as well as the family in some form” (Rawls, 2001: 10). And the principles of justice, as he puts it, determine “the way in which the…institutions [of the basic structure ought to] distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls, 1999: 6). The structure of the view, then, is the following: The principles of justice prescribe certain requirements and aims for the institutions of the basic structure. For Rawls, these include the protection of certain basic rights and liberties, promoting fair equality of opportunity, and maximizing the prospects (understood in terms of “primary social goods” (Rawls, 1999: 78-81)) of the worst off members of society. Whichever institutions are part of the basic structure must adopt the rules and policies best supported by these requirements and aims. The adoption and enforcement of these rules and policies, along with full compliance with them by individuals and private associations, together constitute the procedures that, if followed, ensure, as a matter of pure procedural justice, that outcomes are just whatever they turn out to be. And because the principles of justice do not apply directly to the behavior of individuals and private associations, in the sense that these actors are not, as a matter of justice, bound to promote the aims that the principles prescribe for the basic structure, a wide range of, for

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17 For Rawls’s earlier statements about the extension of the basic structure, see (1999: 6) and (1993: 258).
example, distributive outcomes will be consistent with the procedures being properly followed, and therefore will be consistent with justice.\textsuperscript{18}

In order to determine whether, and if so in what sense, corporations should be considered part of the basic structure on a Rawlsian view, we must ask what the best account of the criteria that determine which institutions ought to be included is. Rawls himself was not always entirely clear about what, on his view, the relevant criteria are, and there is a fair bit of disagreement among political philosophers working within the Rawlsian framework, broadly understood, about how the basic structure should be characterized.\textsuperscript{19}

There are two types of views about the criteria for inclusion in the basic structure that have been defended, both as interpretations of Rawls’s own view and as independently plausible accounts of the boundary between where principles of justice apply and where they do not. On the first type of view, which encompasses what I will refer to as Coercive Accounts of the basic structure, it is at least a necessary condition of an institution’s being a part of the basic structure that it is legally coercive. On views of this type, the basic structure consists in, as G.A. Cohen puts it, the \textit{“broad coercive outline of society”} (Cohen, 2008: 133, emphasis in original). Those who accept Coercive Accounts disagree about exactly which coercive institutions should be included and which, if any, excluded.\textsuperscript{20} There is, however, no doubt that certain institutions must

\textsuperscript{18} Rawls’s well known argument in defense of the view that inequalities that result from structuring the economy in a way that provides incentives to well-placed individuals to work in socially productive ways are at least consistent with, if not required by justice (Rawls, 1999: 67-68), depends on this general structure. For critical discussion, see Cohen (2008: Chs. 1-3).

\textsuperscript{19} Narrower views, on which the basic structure is limited to (generally a subset of) a society’s coercive legal structure, are fairly widely endorsed (e.g. Tan 2004: 346, fn. 29). Recent attempts to defend broader views, which include institutions that are not legally coercive, include Melenovsky (2013) and Syme (2018). For a helpful discussion that focuses on whether private law should be considered part of the basic structure, see Scheffler (2015).

\textsuperscript{20} One reason to think that Rawls himself held that not all of society’s legally coercive institutions are part of the basic structure is that he describes what he calls an “institutional division of labor between the basic structure and the rules applying directly to individuals and associations and to be followed by them in particular transactions” (1993: 268-269). It seems clear from the context that the rules that apply to individuals and associations with respect to particular transactions that Rawls has in mind include, for example, those embodied in contract law (1993: 268). For discussion, see Scheffler (2015).
be included – for example, the constitution, the system of legal property rights, tax and inheritance law, and marriage and family law.

The second type of view about the extension of the basic structure, which encompasses what I will refer to as *Profound Effects Accounts*, is grounded in Rawls’s claim that the basic structure is the primary subject of justice because “its effects are so profound and present from the start” (Rawls, 1999: 7; see also 82). Shortly before making this claim, Rawls describes the basic structure as consisting of society’s “major institutions” (Rawls, 1999: 6). And although the examples that he goes on to give of such institutions include some that are clearly legally coercive (e.g. “the legal protection of freedom of thought and liberty of conscience…private property in the means of production” (Rawls, 1999: 6)), others would seem to include both legally coercive elements and more informal norms and practices (e.g. “competitive markets…the monogamous family” (Rawls, 1999: 6)). If the justification for including an institution in the basic structure is that it has profound effects on people’s prospects in life, then it does not seem as though there is any justification for thinking that only the legally coercive aspects of an institution like the family should be included, since informal norms and practices that structure family life and behavior in competitive markets also have profound effects on people’s life prospects (Cohen, 2008: 136-138). Instead, we should think that an institution is part of the basic structure only if, and perhaps to the extent that, its effects are sufficiently profound (Berkey, 2016: 721).

In the recent business ethics literature, Singer (2015: 75-78) has argued that Rawlsians must accept a Coercive Account of the basic structure, while Blanc and Al-Amoudi (2013: 506-509) have argued that they should accept a Profound Effects Account. In light of this, it is perhaps not surprising that Singer holds that corporations fall outside of the Rawlsian basic
structure (Singer, 2013: 81-82), whereas Blanc and Al-Amoudi hold that, at least under certain conditions, they are part of it (Blanc & Al-Amoudi, 2013: 508-511). I will not, in this section, attempt to resolve either the issue of whether Rawls is best interpreted as holding a Coercive Account or a Profound Effects Account, or the issue of which type of account renders Rawlsian theory most plausible. Instead, I will argue that both Singer and Blanc and Al-Amoudi’s accounts of the boundaries of the basic structure are conceptually problematic. This makes their accounts of which questions are about what the content of the basic structure ought to be (and so must be answered in terms of the principles of justice) conceptually problematic as well.

Before considering Singer and Blanc and Al-Amoudi’s positions, it is important to note that there is a significant ambiguity in framing the key question as whether “corporations” are part of the basic structure, and so subject to the principles of justice. As I noted earlier, important questions at the intersection of political philosophy and business ethics arise at two different levels. First, there are questions about what firms themselves are required, permitted, and not permitted to do within whatever the constraints of society’s legally coercive institutions happen to be. And second, there are questions about what legally coercive restrictions applying to corporate behavior, broadly understood, the state is required, permitted, and not permitted to adopt. We can, then, ask both whether corporations are part of the basic structure in the sense that their conduct is itself subject to the principles of justice, and whether they are part of the basic structure in the sense that the content of laws that enable, constrain, incentivize, and regulate their conduct ought to be determined by applying the principles of justice (Blanc 2016: 411-417).

On Coercive Accounts of the basic structure, no questions about what firms ought or ought not do within the constraints of the legal structure can be questions about what the content
of the basic structure ought to be. This is because the behavior of firms, and that of individuals acting as occupants of roles within them, is not itself legally coercive. On the other hand, at least many, and plausibly all questions about what legally coercive restrictions on corporate behavior the state ought and ought not enact are questions about the content of the basic structure. In contrast, on Profound Effects Accounts, it might seem that whether a question (about either what corporations themselves ought and ought not do, or what legally coercive policies applying to corporate behavior ought or ought not be enacted) is one about the content of the basic structure depends on whether compliance with competing answers would have sufficiently profound differential effects on the life prospects of members of society.

On either view, the basic structure is best understood, as Cohen suggests with reference to Coercive Accounts, as an “outline” of society (Cohen, 2008: 133), within which the choices of individuals and private associations that do not affect the content of the basic structure are made. That outline, on Coercive Accounts, can be thought of as consisting of “slots” into which legally coercive policies are to be placed. The content of these policies should, of course, be chosen by properly applying the principles of justice. At least whenever these principles require that a particular policy be adopted, the slot into which that policy ought to be placed is part of the basic structure. On Profound Effects Accounts, the outline consists of slots into which either legally coercive policies or informal norms and practices are to be placed. And again, at least whenever

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21 It is perhaps debatable whether “slots” into which it is permissible, as a matter of justice, to place a number of different policies are necessarily part of the basic structure. In fact, however, the principles of justice cannot be applied in isolation to a single policy choice, since what they imply with respect to a particular policy choice will at least often depend on what other policies are in place or will be chosen (this is at least suggested by Rawls’s remark that the basic structure consists in “the main political and social institutions and the way they fit together as one scheme of cooperation” (2001: 4, italics added)). On Coercive Accounts, then, the principles of justice most fundamentally recommend a complete set of policies for the basic structure, although we can of course ask, with respect to a particular slot, what policy would be best from the perspective of justice, holding the content of other slots fixed. This point will be discussed further later in this section, in connection with Blanc and Al-Amoudi’s account of the boundaries of the basic structure.
the principles of justice require that a particular policy, norm, or practice be adopted, the slot into which it ought to be placed is part of the basic structure.\textsuperscript{22}

\textit{Singer}

Early in his discussion, Singer notes that business ethicists who have engaged with Rawlsian theory have tended to pay relatively little attention to the shift to a “political” conception of justice that characterized Rawls’s later work (Singer, 2015: 70). This shift was, for Rawls, motivated by the thought that it is inevitable that, in a liberal democratic society, even reasonable citizens who attempt in good faith to arrive at well justified views will disagree, often in deep ways, about what is involved in living a good and ethical life. They will, in Rawls’s terms, endorse a wide range of incompatible “comprehensive doctrines” (Rawls, 1993: xvi-xix). An appropriately political theory of justice must, Rawls claims, be built around this fact. The central function of such a theory is to specify the terms under which citizens who are the subjects of deep disagreement can nonetheless be committed, consistent with their broader comprehensive doctrines, to living together and doing their part within a fair system of social cooperation.\textsuperscript{23}

Singer’s insistence that business ethicists who aim to draw on Rawlsian theory (and to engage with political philosophy more broadly) ought to do so in a way that recognizes Rawls’s shift to a political conception of justice is important.\textsuperscript{24} As he rightly notes, adopting the kind of

\textsuperscript{22} It might be questioned whether the basic structure must, as Cohen suggests, be thought of as an outline of society into which policies, norms, or practices are to be placed. While alternative ways of illustrating the concept of the basic structure are surely available, the substance of any such illustration would have to be essentially the same. This is because the concept of the basic structure just is the concept of a set of policies and, on broader views, informal norms and practices within which “private” choices (that is, choices not directly subject to the principles of justice) are made. I am grateful to an anonymous reviewer for encouraging me to clarify this point.

\textsuperscript{23} Importantly, for Rawls this requires that all accept that citizens are, at least for political purposes, to be regarded as free and equal participants in such a system of cooperation.

\textsuperscript{24} One reason for this, though not the only one, is that political liberalism of the broadly Rawlsian variety has become quite widely accepted among political philosophers.
political conception of justice that Rawls did in his later work has implications for how the basic structure must be conceived. One of the main aims of a political conception of justice is to explain how a just basic structure can provide the conditions within which individuals and private associations can pursue their distinct and incompatible conceptions of the good, consistent with a commitment to justice and to the free and equal status of citizens within the scheme of social cooperation defined by that basic structure. Because of this, it cannot be the case that the principles of justice apply to the internal affairs of private associations, or to the conduct of individuals within the private sphere. This is the case even if, for example, the ways in which private associations behave and structure their internal affairs have profound effects on people’s life prospects. Political liberalism, then, renders Rawlsian Institutionalism incompatible with Profound Effects Accounts of the basic structure that include informal norms and practices that operate within private associations such as families, churches, and, as Singer plausibly argues, corporations (Singer, 2015: 75-82; see also Rawls, 1999: 126, 241). Rawlsian theory, in its political liberal form, then, clearly implies that matters internal to corporations, such as decisions among legally permissible options about what the structure of their governance arrangements will be, are not part of the basic structure, and are therefore not subject to the principles of justice.

In addition, Singer argues that political liberalism entails strict limits on the legal requirements that can permissibly be imposed with respect to the internal governance structures of private associations, including corporations. He begins by noting that members are free to exit corporations in at least roughly the same sense that they are free to exit other voluntary

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This claim is defended in van Parijs (2003: 228-229). For a defense of the view that Rawls’s shift to political liberalism does not require denying that the principles of justice apply directly to individual conduct, see Voorhoeve (2005).
associations, such as churches (Singer, 2015: 69, 79-80). Because of this, he claims, the respect for citizens’ reasonable yet incompatible comprehensive doctrines that, for political liberals, motivates the theoretical division between the public and private spheres and the associated limitation of the principles of justice to the former (that is, to the basic structure), requires that corporations are afforded the same types and degrees of associational liberty to which other voluntary associations are entitled. And since it is widely agreed that at most very limited legal restrictions on the internal governance structures of, for example, churches or private clubs are permissible as a matter of justice, the same must be true for corporations. Rawlsian theory, Singer concludes, implies that virtually no restrictions on the structure of governance within firms is permissible, so that arguments to the effect that Rawlsian theory supports, for example, a legal requirement for some degree of workplace democracy, necessarily fail.26

After drawing this conclusion, Singer claims that it supports the further conclusion that

“[i]t seems difficult to imagine how the corporation could be seen as part of the basic structure in any way, at least as Rawls uses the concept…the corporation becomes relegated to the realm of the voluntary and associational. As a result, a thoroughgoing critique of corporate governance cannot be accomplished through a theory expressed in “political” terms…Rawls’s theory is of no use to the big normative questions of business ethics and corporate governance” (Singer, 2015: 82).

26 It is worth noting here that Singer’s argument suggests that if we accept the widely held view that churches and private clubs ought not be legally required to refrain from discriminating on the basis of characteristics such as race and gender when choosing members, or when selecting individuals for particular positions within the organization, then political liberalism implies that corporations should not be legally required to refrain from such discrimination either. This is, it seems to me, a deeply implausible implication, although I do not think that it follows from the correct understanding of political liberalism (see section 3). If anti-discrimination laws are required by justice and in place, then, of course, Rawlsians will hold that corporations are obligated (under the natural duty of justice) to comply with these laws.
Singer’s thought here appears to be that because Rawlsian theory implies that there are virtually no permissible legal restrictions that can be imposed with respect to corporate governance structure, corporate governance law is not part of the basic structure, any more than the behavior of individual firms is. It is difficult to see how else we might interpret the claim that Rawls’s theory is “of no use” to questions about corporate governance. The thought appears to be that the theory applies only to the basic structure, and so because corporate governance law lies outside of the basic structure, the theory has no implications for it whatsoever.

This, however, is a conceptual mistake. Singer’s argument, if correct, does not license the conclusion that corporate governance law lies outside of the basic structure. Instead, it implies that a proper application of Rawls’s principles generates the conclusion that virtually no legal restrictions on how corporations structure their governance arrangements are, as a matter of justice, permissible. This is a substantive conclusion about what part of the content of the basic structure should be. It is not, as Singer seems to suggest, a conclusion to the effect that the slot in the coercive outline of society into which legal restrictions on corporate governance arrangements might or might not be placed is not part of the basic structure.

One possible source of this conceptual error is a failure to properly conceptualize the basic structure as a theoretical outline of society containing slots into which policies (and, if we accept a Profound Effects Account, informal norms and practices) with different contents can be placed. This failure may lead one to think of it instead as consisting in the particular policies that

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27 In the next section, I will suggest some reasons to think that it is not correct.
28 In this way, Singer’s argument resembles the arguments offered by John Tomasi (2012) for the view that Rawlsian theory, properly applied, licenses far fewer restrictions on economic liberty, as typically understood by libertarians, than most Rawlsians have thought (see also Shapiro, 1995). For criticism of Tomasi’s view, see Arnold (2013); Patten (2014); von Platz (2014); Melenovsky and Bernstein (2015).
either are, or ought to be, adopted. If, with this latter conceptualization in mind, one asks the question whether particular policies (such as those restricting the corporate governance arrangements that are legally permitted) should be adopted, and arrives at the answer that no restrictive legal provisions are permissible, then one might be led to think that the question must not have been one about the basic structure at all. After all, if this answer is correct, then there are no restrictive policies that ought to be adopted as part of the content of the basic structure.

To see why this is a mistake, consider that justice, on a Rawlsian view (and on at least most plausible views), requires that freedom of speech and liberty of conscience are protected. These requirements clearly apply to the basic structure of society, and what they imply is that virtually no legal restrictions on freedom of speech and liberty of conscience are enacted. It would clearly be a mistake to think that because virtually no legal restrictions on freedom of speech are permissible, speech law must not be part of the basic structure. What is required is that the basic structure, as a whole, protects individuals’ freedom of speech and liberty of conscience. The means by which it does this might consist primarily in avoiding adopting any legal restrictions on the content of citizens’ speech. A requirement of justice to avoid adopting a particular policy is no less a requirement of justice than a requirement to adopt a particular policy. This is easy to see if we ask questions about whether particular policies ought, as a matter of justice, to be adopted with the conception of the basic structure as an outline that is to be filled in with particular policies clearly in mind.

In the case of corporate governance law, if respect for the pluralism of reasonable comprehensive doctrines, and for freedom of association, requires that the state refrain from adopting virtually all potential legal restrictions, then this is because justice turns out to require, for example, the robust protection of freedom of contract, in the same way that it requires
protecting the right of churches to organize themselves as hierarchically as they wish. This is a conclusion about what part of the content of the basic structure ought, as a matter of justice, to be. It is certainly not grounds for thinking that Rawlsian justice has nothing to say about corporate governance. If it is the right conclusion, then Rawlsian justice says something very clear about corporate governance and justice – namely that virtually any corporate governance arrangement is consistent with justice. This may not be a conclusion that we find especially plausible, but if Singer is right then it is the conclusion that Rawlsians, or at least those who accept the political liberalism that characterizes Rawls’s later work, are committed to accepting.

It is important to notice that even on Singer’s own view, the question whether legal restrictions on corporate governance arrangements ought to be enacted is a question of justice, to be settled by determining what the principles of justice imply. This helps to make it clear exactly why his suggestion that Rawlsian theory is “of no use” to questions about corporate governance must be a conceptual error. For Rawlsians, any question that must be settled by determining what the principles of justice imply is necessarily a question about what part of the content of the basic structure should be. This follows from the central Institutionalist claim that the principles of justice apply to the institutions of the basic structure, and do not apply directly elsewhere. Only a conception of the basic structure on which it consists, at least roughly, of slots into which policies (or informal norms and practices) might or might not be placed can properly capture the fact that questions about whether legal restrictions ought or ought not be adopted are questions of justice.
Blanc and Al-Amoudi make a conceptual mistake that is similar to the one that I have claimed characterizes Singer’s discussion. Their central thesis is that many of the effects of the decline of the welfare state in a number of industrialized societies over roughly the past forty years provide reasons to think that what they call “corporate institutions” (Blanc & Al-Amoudi, 2013: 497) should, in those societies, be considered part of the basic structure. This is the case, on their view, despite the fact that these institutions could plausibly have been thought to lie outside of the basic structure when strong welfare states were in place.

By “corporate institutions,” Blanc and Al-Amoudi mean, roughly, laws regulating the internal governance structures and operations of corporations, for example legal requirements that corporations are governed in accordance with some form and/or degree of workplace democracy (Blanc & Al-Amoudi, 2013: 505-506, 509, 511-515). On their view, whether a particular institution or set of institutions is part of the basic structure of a society is in part an empirical question (Blanc & Al-Amoudi, 2013: 506), which is to be answered by determining whether that institution or set of institutions “has a systemic influence on the distribution of primary goods” (Blanc & Al-Amoudi, 2013: 507). If an institution satisfies this “systemic

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29 Because Blanc and Al-Amoudi limit the remedies that justice can require for the negative effects of the weakening of the welfare state to changes in the coercive legal structure (2013: 509), it seems to me that they do not, as they claim, endorse a Profound Effects Account of the basic structure, but in fact accept a Coercive Account. They claim to endorse a Profound Effects Account because they hold that informal norms and practices can be unjust in the sense that they can bring about effects that, as a matter of justice, require remedies. But for informal norms and practices to be part of the basic structure it is not enough that their effects can require remedies consisting of changes to the coercive legal structure. Instead, principles of justice would have to apply directly to those norms and practices, in the sense that justice could require that the behaviors of individual (and corporate) actors that together constitute the norms and practices be guided by the principles of justice. Proponents of Coercive Accounts all agree that when changes to coercive policies could, consistent with the constraints on permissible coercion given by the principles of justice, advance the aims prescribed by the principles of justice (by, for example, causing changes in the character of informal norms and practices), these changes are required as a matter of justice (Van Parijs, 2003). Since this is all that Blanc and Al-Amoudi are claiming about what justice can require with respect to informal norms and practices, there is no distinction between their account of the actions and decisions to which principles of justice apply and those defended by proponents of Coercive Accounts of the basic structure.
criterion” (Blanc & Al-Amoudi, 2013: 508), then it is part of the basic structure, and so subject to the principles of justice, in the sense that its policies must be chosen by properly applying those principles. If, on the other hand, an institution does not have a systemic influence on the distribution of primary goods, then it is not part of the basic structure, and therefore not subject to the principles of justice.

Blanc and Al-Amoudi claim, in effect, that with a strong welfare state in place, whether or not corporations are legally required to adopt democratic governance procedures may not have a systemic effect on the distribution of primary goods. In the absence of a strong welfare state, on the other hand, it seems much more likely that requiring corporations to adopt some form and/or degree of workplace democracy would make a significant difference to the prospects of the worst off members of society. These are not implausible empirical claims. They do not, however, support the conclusion that Blanc and Al-Amoudi suggest, namely that legal requirements for workplace democracy might be part of the basic structure in societies characterized by weakened welfare states, but not in societies with robust welfare states.

Blanc and Al-Amoudi’s suggestion that strong welfare states might have been sufficient to prevent justice from requiring workplace democracy provisions is at least somewhat curious, given that they claim to be working within a Rawlsian framework. This is because Rawls himself explicitly rejected welfare-state capitalism as a system that could be consistent with justice. He instead favored property-owning democracy (Rawls, 1999: xiv-xvi; 2001: 135-140, 158-162), although he also claimed that liberal socialism might be consistent with justice in at least some circumstances (Rawls, 2001: 138-139). Property-owning democracy requires that ownership of the means of production be widely dispersed among individuals in society, in contrast with welfare-state capitalism, which is consistent with concentrated ownership of the means of production by a small percentage of citizens (for further discussion of property-owning democracy, see the essays in O’Neill & Williamson, 2012; Thomas, 2011 and 2016). Whether restrictions on internal corporate governance arrangements might plausibly be required, as a matter of justice, within a property-owning democracy is an interesting question within Rawlsian theory, though it is not the one taken up by Blanc and Al-Amoudi. In addition, Singer’s argument, if it succeeded, would imply that such restrictions are impermissible regardless of a society’s economic system. Full consideration of whether restrictions on internal corporate governance arrangements would be permissible or required within a property-owning democracy that otherwise satisfies Rawls’s principles of justice must, then, be left for another occasion. I am grateful to an anonymous reviewer for encouraging me to consider the significance of Rawls’s endorsement of property-owning democracy for this section’s argument.
This is because, like Singer, Blanc and Al-Amoudi treat the conclusion that a certain kind of policy is, as a matter of justice, either prohibited, or at least not required, as grounds for concluding that the question about whether the policy should be adopted is not a question about what the content of (a part of) the basic structure should be. But, as I have already argued, this is a conceptual error. What their argument actually suggests is that when we ask whether justice requires mandating that corporations adopt some form and/or degree of workplace democracy, there are reasons to think that the answer might be negative in cases in which the society in question has a strong welfare state in place, but positive in cases in which the society in question lacks a strong welfare state. But regardless of what the correct answer is in any given case, the question whether mandating workplace democracy is required as a matter of justice is always a question about what (a part of) the content of the basic structure should be. Once again, there is a slot in the broad (coercive) outline of society into which some policy or other (e.g. a legal requirement for some form and/or degree of workplace democracy, or a broad legal permission for corporations to organize their internal governance however their leaders see fit) must be placed. Which policies are best (or at least acceptable) from the perspective of justice might depend on which other policies have been chosen to fill other slots. A policy that permits corporations to adopt any internal governance arrangements that its leaders see fit, or at least permits the adoption of a wide range of such arrangements, is, however, no less a part of the broad (coercive) outline of society that determines the structure of the private sphere within which individuals and private associations must act than would be a policy that substantially constrains the range of internal governance arrangements that are available to corporations.
3. WHAT DOES RAWLSIAN THEORY IMPLY FOR CORPORATIONS?

I have argued that any question about whether legal restrictions should be placed on the internal governance structure and operations of corporations is a question about what the content of (a part of) the Rawlsian basic structure should be. I have also claimed that Blanc and Al-Amoudi are committed to a Coercive Account of the basic structure, despite their claim to endorse a Profound Effects Account (Blanc & Al-Amoudi, 2013: 507; see fn. 29). In addition, it seems to me that Singer’s claim that the political liberalism that characterized Rawls’s later work entails a Coercive Account of the basic structure (Singer, 2015: 71-72, 75-78) is correct. Determining what Rawlsian theory implies for corporations, then, requires asking what the principles of justice, and the fundamental commitments of political liberalism that are taken to support those principles, imply about the legal restrictions and permissions that should apply to corporate activity, including matters of internal corporate governance.

Singer suggests that Rawls’s political liberalism commits him to treating corporations in roughly the same way that he treats churches and similar private associations (Singer, 2015: 69), and that this means that virtually any restrictions on their internal governance arrangements will be ruled out. The thought seems to be that such restrictions could be justified only on grounds that are ruled out by political liberalism, such as comprehensive moral commitments regarding how individuals in voluntary associations ought to relate to each other. On this view, Rawls’s commitment to reasonable pluralism entails that the freedom of association guaranteed by the first principle of justice (Rawls, 1993: 291) includes the right to organize corporations with any internal governance structure that the members might choose. And if this is correct, then the

31 To reiterate, this is because of their view that the injustices that they suggest should perhaps be addressed via workplace democracy measures call only for legislative (i.e. coercive) remedies, and not for agents such as individuals and corporations to voluntarily and directly promote the aims prescribed by principles of justice (Blanc & Al-Amoudi, 2013: 509).
kinds of worries that motivate Blanc and Al-Amoudi to argue that Rawlsian theory can support mandating some form and/or degree of workplace democracy in societies lacking strong welfare states (such as that the absence of both a strong welfare state and workplace democracy measures will tend to provide inadequate social bases of self-respect to many citizens) will not be able to provide a justification for mandating workplace democracy measures, given the priority of the basic liberties in Rawlsian theory.32

This argument, however, neglects a key feature of Rawls’s political liberalism that, once recognized, makes it clear that the answer to the question whether justice requires that the law treat corporations roughly like churches and other voluntary associations depends, at least in part, on empirical matters. This is the case even if it is true that the value of freedom of association provides some reason to avoid imposing restrictions on their internal governance.

The entire political liberal project takes as a fundamental premise the free and equal status of citizens (Rawls, 1993: xviii, 3-4, 14), and the requirement that citizens in a just society must be capable of relating to each other as free and equal (Rawls, 1993: xliii). Because of this, policies that are necessary to ensure that citizens can relate to each other as free and equal, and in particular policies that are essential to the ability of citizens to view each other as political equals

32 Because Singer holds that the basic liberties, as Rawls is committed to understanding them, require that no legal restrictions on the internal governance arrangements of corporations are enacted, he is committed to the view that questions about the implications of Rawls’s principles of justice for corporate governance law are settled at the constitutional convention stage of Rawls’s four-stage sequence (Rawls, 1999: 171-176 and 2001: 48). At this stage, delegates determine the appropriate content of their society’s constitution (the “constitutional essentials,” in Rawls’s terms (Rawls, 2001: 48)). They do this by determining the institutional arrangements that must be ensured by the constitution in order for the equal basic liberties principle to be satisfied, in light of information about their society’s “natural circumstances and resources…level of economic advancement…political culture, and so on” (Rawls, 1999: 173). In my view, however, questions about the implications of Rawlsian theory for corporate governance law are best understood as arising at the legislative stage. At this stage legislators determine the policies that ought to be adopted, within the constitutional framework established at the constitutional convention stage, in order to satisfy fair equality of opportunity and the difference principle. Also relevant at this stage is the issue, on which I focus in the remainder of this section, of what policies will best ensure that citizens can relate to each other as free and equal. For a helpful discussion of Rawls’s four-stage sequence and its implications for applying Rawlsian theory to policy questions, see Macleod (2014). I am grateful to an anonymous reviewer for encouraging me to consider how Rawls’s four-stage sequence bears on my analysis.
within a system of social cooperation for mutual advantage, are, as a general matter, required as a matter of justice. This is true even if they place some constraints on freedom of association.\textsuperscript{33}

This feature of political liberalism provides the grounds on which political liberals can, in conjunction with plausible empirical claims, defend potentially significant differences in the way that the law ought to treat corporations and how it ought to treat other private associations, such as churches. It can, for example, be plausibly argued that while permitting churches to refuse to ordain female clergy may not, in at least some empirical conditions, undermine the ability of men and women (including those who are members of churches that do not ordain female clergy) to view and relate to each other as free and equal citizens, permitting corporations to discriminate against women in hiring for any positions, would, in virtually any conditions, undermine the ability of citizens to view and relate to each other as free and equal.\textsuperscript{34} Corporations play a substantial role in determining who gains access to valuable employment opportunities, and in at least most societies employment has significant effects on how individuals relate to each other. Because of this, it can be argued that allowing corporations to decide which persons to include as members, and which to reject, without any legal restrictions, would tend to undermine the foundational values of political liberalism in a way and/or to an extent that allowing other private associations to determine their membership free from legal restrictions might not.\textsuperscript{35}

\textsuperscript{33} This is one (though not the only) reason that legal prohibitions on discrimination in hiring according to race, sex, and other characteristics of individuals that are irrelevant to job performance are surely required by Rawlsian justice, even in its political liberal form, despite the priority of freedom of association over equality of opportunity and the difference principle. A legal regime that did not prohibit such discrimination would not properly embody the necessary commitment to the free and equal status of citizens. And the absence of such a prohibition would be at least likely to affect the ability of citizens to view and relate to each other as free and equal.

\textsuperscript{34} I am not myself particularly convinced that there are many possible societies in which churches refusing to ordain female clergy would not have at least some tendency to undermine the prospects for men and women to view and relate to each other as free and equal. I am inclined, then, to think that political liberalism might often provide grounds for more substantial governmental action aimed at promoting gender equality in what is typically thought of as the private sphere than most political liberals tend to accept.

\textsuperscript{35} It is worth noting that this kind of argument represents the means by which a defense of widely accepted features of existing legal practice in many countries, including the United States, can be made within a political liberal framework. For example, churches and many other private associations are not subject to many of the anti-
An argument of this general form could be made about, for example, policies mandating some form and/or degree of workplace democracy. It seems at least plausible that, in some empirical conditions, the absence of the ability for workers to participate, at least to some degree, in the governance of their workplaces could undermine the ability of, for example, high-level executives and low-level workers to view and relate to each other as free and equal citizens. For example, as Blanc and Al-Amoudi might claim, in a society without a strong welfare state, in which inequalities in income and wealth are large and workers have little opportunity to pursue alternatives to working in firms, ensuring that employees are able to exercise some influence over the internal governance of the firms in which they work might make a significant difference to the prospect that citizens will, as a general matter, be able to relate to each other as free and equal. When it is true that enacting a requirement that firms adopt some form and/or degree of workplace democracy would make a significant positive difference to the likelihood that citizens will be able to relate to each other as free and equal, there will be a strong case that can be made, within the framework provided by Rawls’s political liberalism, for enacting such a requirement.

This highlights the way in which, on a political liberal view, empirical conditions play a role in determining which policies ought, as a matter of justice, to be adopted with regard to the regulation of corporate governance. If I am correct, then Singer has substantially overstated the extent to which the political liberalism that Rawls adopted in his later work constrains the range of corporate governance regulations that could, in principle, be permitted or required as a matter of discrimination requirements that apply to corporations, and these differences are viewed by many as not merely permissible, but required as a matter of justice. It is also worth noting, at this point in my discussion, that although it is both intuitively plausible and implied by my argument in the next section that corporations can be obligated, as a matter of justice, not to discriminate in hiring even when there are no legal restrictions against doing so, my argument in this section does not, and is not intended to, provide direct support for that conclusion, or for the more general conclusion that the principles of justice apply directly to corporate behavior. My aim in this section is merely to clarify how we should think about what Rawlsian theory implies with respect to policy matters. I am grateful to an anonymous referee for encouraging me to clarify this latter point.
of justice. At least under certain empirical conditions, the fundamental commitment to the free and equal status of citizens, and the need for citizens to be capable of relating to each other as free and equal, can provide strong grounds in favor of regulations on the internal governance of corporations.

Importantly, however, this conclusion does not in any way support Blanc and Al-Amoudi’s view that whether corporate governance law is part of the basic structure itself depends on empirical matters. Once again, corporate governance law is no less a part of the basic structure in conditions in which considerations of justice, all things considered, provide reason to refrain from enacting restrictions (for example, because the ability of citizens to view and relate to each other as free and equal is sufficiently secure and would not be promoted by enacting restrictions, and considerations of freedom of association provide some reason to limit restrictions) than it is in conditions in which considerations of justice support enacting them.

4. DOES IT MATTER WHETHER CORPORATIONS ARE PART OF THE BASIC STRUCTURE?

I have argued that Rawlsian theory, even in the political liberal form that characterized Rawls’s later work, can support substantial regulation of the internal governance of corporations by the basic structure, at least in certain empirical conditions. At least often, then, Rawlsian theory will be able, at least to some extent, to account for the kinds of concerns that motivate Blanc and Al-Amoudi’s argument, namely that the behavior of corporations can have substantial effects on individuals’ access to justice-relevant goods, such as opportunities for meaningful work and a decent share of income and wealth. On the Rawlsian view, as I have argued it should be understood, there is reason to adopt policies restricting the range of permissible corporate
governance arrangements when, and only when, such policies will make a significant enough positive difference to the ability of citizens to view and relate to each other as free and equal. Some of the plausible reasons that policies that increase opportunities for meaningful work or reduce income inequality might sometimes make a difference to the ability of citizens to view and relate to each other as free and equal include: (1) that those who have access to opportunities for meaningful work may be more likely to possess the self-respect necessary to view themselves as equal participants in society; and (2) that limiting inequalities in income may tend to limit the kinds of inequalities in opportunities for political influence that can undermine the ability of citizens to view and relate to each other as free and equal.

Consider, however, that even in the absence of policies mandating that corporations adopt certain internal governance arrangements that would promote justice-relevant values, corporations could, in principle, promote those values voluntarily, perhaps by adopting the very internal governance arrangements the mandating of which by the basic structure might be called for. The internal governance arrangements of corporations are not, I have argued, themselves part of the basic structure (even though they might permissibly be regulated by the basic structure). Because of this, Institutionalism implies that corporations cannot be required, as a matter of justice, to voluntarily adopt any particular internal governance arrangements, even if their doing so would promote justice-relevant values just as much as their being forced by the basic structure would (recall the discussion of Carly in section 1).

The denial that corporations can be required to voluntarily and directly promote justice-relevant values (that is, the aims prescribed by the principles of justice) is, however, at least somewhat puzzling, for reasons that extend beyond those that have been pointed to in arguments against the Institutionalist view about individuals’ obligations of justice (Cohen, 2000 and 2008;
Murphy, 1998). For example, at least many corporations can affect justice-relevant values to a much greater extent than any individual can, so that it seems especially odd to think that they can have no justice-relevant reasons to directly promote those values. Recall that Rawls claims that one central reason to hold that the basic structure is the primary subject of justice is that “its effects are so profound and present from the start” (Rawls, 1999: 7). It seems clearly correct to think that the fact that the behavior of a particular kind of entity or agent will have profound effects on justice-relevant values provides strong grounds for thinking that the behavior of entities or agents of that kind is subject to the principles of justice. And since it is undeniable that the behavior of corporations has profound effects on justice-relevant values, there are strong reasons to be skeptical of views that deny that corporations can be required to voluntarily promote those values.

A second reason that we should be particularly skeptical about the view that corporations cannot be required to voluntarily promote justice-relevant values is that they plausibly lack the kinds of morally relevant interests, such as an interest in pursuing personal projects and special relationships, that many (e.g. Scheffler, 2005; Tan, 2004) take to provide at least part of the grounds for denying that principles of justice apply directly to individuals.\(^\text{36}\) It is reasonable to think that corporations lack these kinds of morally relevant interests (and indeed all morally relevant interests) because they are not, in themselves, experiencing subjects (though, of course, they have experiencing subjects as members). It is widely accepted that only experiencing subjects, that is, only those beings with at least the capacity for sentience, have morally relevant interests. And only those moral agents with morally relevant interests in pursuing projects and

\(^{36}\) For the claim that these kinds of interests of individuals also provide grounds for rejecting the view that corporations ought to be structured so as to maximize their profits, see Hussain (2012). For further discussion, see Singer (2013) and Hussain (2013).
relationships can be thought not to be directly subject to the principles of justice in virtue of having those interests. Since corporations are not experiencing subjects, and therefore do not possess any morally relevant interests, one of the most plausible and widely appealed to reasons for denying that individuals are directly subject to the principles of justice cannot be appealed to in order to challenge the claim that corporations are directly subject to those principles.\textsuperscript{37}

It might be objected that corporations have commercial interests that provide grounds for rejecting the view that they can be obligated to directly promote justice-relevant values.\textsuperscript{38} There are two important and related points to make in response. First, even if there is some sense in which it is true that corporations themselves have commercial interests, it is not plausible that these interests are morally relevant, since corporations are not experiencing subjects. But only morally relevant interests can provide reasons to doubt that moral agents can be obligated to promote important values that stand to be affected by their actions.\textsuperscript{39} Of course, we can interpret the claim that corporations have commercial interests as referring to the interests of, for example, shareholders in the profits that the corporations might generate for them. Since these are interests possessed by experiencing subjects, they are plausibly morally relevant. But if this is how we interpret the claim that corporations have commercial interests that ground an objection to the view that they can be obligated to promote justice-relevant values, then the objection appears to amount to the claim that shareholder interests must always take priority over justice-relevant values in corporate decision-making. This claim, however, should seem no more plausible than

\textsuperscript{37} For a more extensive discussion of this issue, see Berkey (2019: 123-127).
\textsuperscript{38} I am grateful to an anonymous reviewer for encouraging me to discuss this issue.
\textsuperscript{39} One way to see the implausibility of thinking that corporations themselves have morally important interests is to imagine a case in which one could perform an action that would promote a corporation’s interests in a way that would not also promote the interests of any individual human or other sentient beings at all. In this kind of case, there would seem to be no morally relevant reason whatsoever to perform the action. If there is any sense in which corporations have interests, they cannot plausibly be thought to matter in themselves, morally speaking. At most they matter derivatively, insofar as promoting them will tend to promote the interests of sentient beings.
the claim that shareholder interests should always take priority over any other morally important values, such as ensuring that employees are treated well, refraining from deceiving customers, or avoiding environmental destruction. And since it is widely accepted that corporations have obligations beyond maximizing profits for shareholders, this line of objection has no special force against the claim that corporations can be obligated to directly promote justice-relevant values.

A second point to note is that while the fact that corporations are typically structured to pursue profits within competitive markets regardless of the impact of their doing so on a range of morally important values gives us some reason to be skeptical that many will in fact choose to promote justice-relevant values when this would negatively impact profitability, it does not give us any reason to reject the view that they can be obligated to do so. Here as well, justice-relevant values are no different than any other values that are widely thought to ground obligations on the part of corporations to refrain from pursuing maximally profitable business strategies. The relevant question is about what can be required from an ethical perspective, and not about what corporations are in fact likely or unlikely to do.

A third reason to be skeptical of the view that corporations cannot be required to voluntarily and directly promote justice-relevant values can be seen by noting that both Singer and Blanc and Al-Amoudi’s discussions are at least in part motivated by a concern about the kinds of outcomes that the behavior of corporations can affect (Blanc & Al-Amoudi, 2013: 516-518; Singer, 2015: 84-85). This concern is, for example, why Blanc and Al-Amoudi suggest (despite their failure to endorse all of its implications) that we should accept a Profound Effects Account of the basic structure. And it appears to explain, at least in part, why Singer holds, in light of his account of the implications of political liberalism, that we must “resist the impulse to
reach for Rawls when dealing with the corporation” (Singer, 2015: 88). In virtue of the fact that the behavior of corporations can have massive effects on justice-relevant values, it seems quite appropriate for this kind of direct concern for outcomes to play a central role in our thinking about what principles of justice imply with respect to such behavior.

This kind of direct concern for the profound effects that the behavior of corporations can have on what intuitively seem to be justice-relevant values stands in tension, however, with central components of Rawlsian theory. Recall that the pure proceduralism about distributive justice that Rawls endorses implies that nothing that private actors (i.e. actors that are not part of the basic structure) do can affect the extent to which the distribution of resources in society is just or unjust. Since corporations must, on Rawls’s view, be considered private actors, pure proceduralism implies that nothing that corporations might do with their vast wealth, within the constraints set by the basic structure (whether it is just or unjust), can make the resulting distribution of resources either more or less unjust. For example, imagine that leaders at dozens of major corporations suddenly become convinced that the levels of poverty and inequality in the contemporary United States are deeply unjust, and successfully work to get their firms to voluntarily adopt policies that substantially increase employment opportunities for those living in poverty, as well as wages for those hired. As a result of these efforts, vast numbers of Americans are lifted out of poverty, income inequality is reduced to a notable extent, and there is a clear increase in the extent to which citizens are able to view and relate to each other as free and equal. For Rawlsians, these results cannot count as improvements with respect to justice, since they have not been brought about via changes at the level of the basic structure. And because they cannot count as improvements with respect to justice, there is no basis within Rawlsian theory...
theory for thinking that corporations can have justice-based reasons to adopt the policies that will bring them about. There cannot be justice-based reasons to do things that will make no difference with respect to justice.

On reflection, this implication should, I think, seem quite implausible. The kind of direct concern about the apparently justice-relevant effects of the behavior of corporations that has motivated many business ethicists to think about the relationship between political philosophy and corporate action, then, suggests that we should think that principles of justice apply directly to corporations, in the sense that corporations have justice-relevant reasons, and potentially justice-based obligations, to directly promote the aims prescribed by the principles of justice. On this view, it does not matter whether corporations are, in any sense, themselves part of the basic structure; they have justice relevant reasons, and potentially justice-based obligations, simply in virtue of their capacity to directly affect justice-relevant values.

It is important to note that accepting this conclusion does not commit us to thinking that corporations are obligated to do everything that they can to improve things with respect to justice. The justice-based reasons that apply to corporations might, in at least many cases, be outweighed by other reasons that bear on how they ought to behave, including potentially

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41 If this is correct, then our thinking about the sense in which corporate behavior is political, and therefore relevant to political philosophy, must at least include the view that corporations are, as Pierre-Yves Néron puts it, “distributive agents” (Néron, 2010: 336-337), that is, agents whose behavior has significant justice-relevant effects on the distribution of resources.

42 It might be objected to this claim that the capacity to affect justice-relevant values is an insufficient basis for the conclusion that corporations can have direct obligations of justice. It is important to note, however, that the argument that I have made relies not merely on the fact that corporations have this capacity, but also on the further facts (1) that their behavior has especially pervasive and profound effects on justice-relevant values; (2) that they lack the kinds of morally relevant interests that are often thought to support the claim that individuals do not have direct obligations of justice; and, most importantly (3) that any conception of justice that denies that corporations have justice-based reasons to promote justice-relevant values is inconsistent with the concern about the ways in which corporate behavior can affect people’s life prospects that clearly motivates many theorists who have discussed the implications of principles of justice for corporations. I am grateful to an anonymous reviewer for encouraging me to clarify this.
reasons to seek profits on behalf of shareholders.\textsuperscript{43} This is because once we give up the idea that the principles of justice apply only to the basic structure, the institutions of which have the sole purpose of realizing justice, we must accept that the reasons deriving from principles of justice that any agent has can, in principle, conflict with other reasons. And in these cases what an agent ought to do, all things considered, will depend on how all of the competing reasons weigh against each other. In the case of the legally coercive institutions of the Rawlsian basic structure, the reasons provided by the principles of justice will rarely, if ever, be outweighed. On the other hand, for individual agents, and private associations such as corporations, they are more likely to be outweighed by other reasons that make it at least permissible for the agents not to be guided solely by considerations of justice. If my argument in this section is correct, however, then at least when certain state institutions are failing to do everything that they ought to do as a matter of justice, the reasons that other agents have to promote the justice-relevant values that are inadequately advanced elsewhere are likely to become correspondingly stronger.

It might be objected that rather than thinking that corporations are obligated to directly promote justice-relevant values when state institutions fail to do so adequately, we should instead hold that all agents are obligated to contribute to efforts to make the relevant state institutions just.\textsuperscript{44} This is the view that Rawls himself accepted about the obligations of individuals (Rawls, 1999: 99), and it is the one that it seems natural for Institutionalists to accept with respect to corporations as well.

The first important thing to notice about this view is that it may not be any less demanding than the view that corporations are obligated to directly promote justice-relevant

\textsuperscript{43} For a view with roughly this structure, though not formulated in terms of justice, see Strudler (2017).

\textsuperscript{44} I am grateful to an anonymous reviewer for encouraging me to consider this objection.
values. This is because transforming unjust institutions into just ones will generally be costly, requiring significant investments of time and resources. For those who are inclined to think that corporations cannot be obligated to directly promote justice-relevant values because doing so would tend to be costly to their bottom-lines, then, holding that they are instead obligated to contribute to efforts to make state institutions just will not actually be an appealing alternative. Consider, for example, the resources that a corporation would have to put into an effort to ensure that the state provides an adequate social minimum for all citizens in order to have even a chance of making a notable difference to its probability of succeeding. The same resources directed, for example, to increasing the wages of the corporation’s lowest-paid employees (where this comes at a net cost to the corporation), might do just as much, or possibly even more, to advance the justice-relevant value of providing people with a minimally decent standard of living.

Once we recognize that contributing to efforts to transform unjust institutions into just ones will often be at least as costly as promoting justice-relevant values directly, there do not seem to be any plausible reasons to deny that corporations can be obligated to do the latter. In addition, in many circumstances a single corporation contributing to an effort to transform unjust institutions would likely be futile, and amount to a waste of resources that could otherwise have contributed to justice-relevant values. If a corporation directs one million dollars to a campaign to enact a social minimum provided by the state, its contribution is likely to do relatively little to actually promote justice-relevant values, as long as there are few or no others also contributing to

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45 For a similar claim applied to individuals, see Murphy (1998, p. 289) and Berkey (2016: 726-731).
46 The relevant alternatives would seem to be either denying that corporations can have any obligations of justice at all, including obligations to contribute to making basic structural institutions just, or endorsing a (perhaps low) ceiling on the costs that they can be obligated to accept to promote justice-relevant values in either possible way, no matter how unjust society is or how effective they might be in promoting those values. Although I cannot argue for this claim here, I find both of these alternatives deeply implausible. In addition, I doubt that anyone who seeks to draw on Rawlsian theory in order to address questions in business ethics would advocate either of these views.
the effort. Achieving institutional change requires large-scale cooperation and substantial resources, and in some cases it is clear enough that a single contribution will not bring about any change in results. On the other hand, there are a number of ways that the corporation might direct the very same one million dollars that would be virtually certain to directly and significantly promote justice-relevant values (e.g. increasing the wages of its lowest-paid employees). If a corporation can either direct resources to an effort to transform unjust institutions that is virtually certain to fail, or direct them in a way that will certainly directly promote justice-relevant values to a significant extent, then for reasons that should be clear, it should do the latter. And if this is correct, then any Institutionalist account of corporate obligations of justice must be rejected.47

Finally, it might be suggested that my argument in this section, even if it is successful, shows only that corporations can have obligations to directly promote justice-relevant values in non-ideal conditions in which the institutions of the basic structure are less than fully just. This is because, it might be claimed, in a society with fully just institutions, justice will necessarily be ensured by those institutions, so that, apart from compliance with the laws imposed by the basic structure, there is nothing that corporations would be in a position to do that could either advance or undermine the realization of justice.48 In light of this, it might also be suggested that I have

47 This point is, of course, consistent with thinking that it would be much better if individuals’ entitlements of justice were ensured by the institutions of the basic structure rather than secured piecemeal through the voluntary actions of corporations and other actors in civil society. It is plausibly itself a requirement of justice that our institutions ensure that no one has to rely on private efforts in order to, for example, have their basic needs met. One reason (though not the only one) that this seems plausible is that the success of individuals’ attempts to promote justice through their private conduct is likely to vary quite a bit, even if they are sincere, since individuals will have less than fully reliable views about how best to promote the relevant values. This will, of course, also be true of individuals making decisions in their capacities as corporate managers. Nonetheless, none of this undermines my argument that corporations can be obligated to promote justice-relevant values when they are in position to do so, and perhaps in particular when the institutions of the basic structure are not doing everything that they ought to be doing as a matter of justice. This is because there can be cases in which corporations are clearly in a position to promote justice-relevant values that the basic structure is inadequately advancing, and in which the best way that they can promote those values is to take certain direct actions to do so, rather than attempting to contribute to changing the relevant basic structural institutions.

48 I am grateful to an anonymous reviewer for encouraging me to discuss this point.
failed to undermine any core Rawlsian commitments, since Rawls offered only an ideal theory of justice.

There are three important points to note in response to this concern. The first is that my target in this section is not Rawlsian theory at its most general level, but Institutionalism and the pure proceduralism that is typically associated with it. Institutionalism is, of course, a central feature of Rawlsian theory, but importantly, as Rawls himself notes (Rawls, 1999: 99), it has clear implications for non-ideal theory. I have argued that one of these implications is implausible, and that this gives us reason to reject Institutionalism. If I am right about this, then one of Rawls’s core commitments is mistaken. The fact that it has been shown to be mistaken due to an implausible implication for non-ideal theory in no way limits the force of the argument.

The second point to note is that the rejection of Institutionalism has important implications within ideal theory as well. For example, since the rejection of Institutionalism implies that individuals and corporations have reasons to directly promote justice-relevant values, it implies that they can have such reasons even if the institutions of the basic structure are fully just. And, plausibly, even the best possible institutions might sometimes allow important justice-relevant values to be less than adequately realized (this is an important reason to reject pure proceduralism). Institutional policy is necessarily coarse-grained in certain important ways, so that even the best possible institutional designs may have cracks through which certain individuals’ entitlements of justice might fall. In these cases, the reasons that individuals and corporations always have to directly promote justice-relevant values where they can might generate obligations to do so, despite the fact that society’s institutions are as just as they can be.

Finally, there are reasons to think that some requirements of justice cannot necessarily be met through state policy alone, for reasons that extend beyond the fact that policy is inevitably
coarse-grained (Berkey, 2018). For example, if we think that it is a requirement of justice that everyone is provided with a minimum standard of health care, then it is a requirement of justice that there are medical personnel available to provide care for everyone (Stanczyk, 2012), and a requirement of justice that drugs are available and affordable for all who need them. There are, however, limits to what the state can permissibly do to ensure that these requirements are satisfied. It cannot, for example, force people to attend medical school against their will in order to address a shortage of doctors in poor rural communities (Berkey, 2018: 736-744). And, plausibly, it cannot force corporations to produce drugs needed by poor patients with serious conditions rather than more profitable drugs that it can sell to wealthier patients with less serious conditions. Even in a society with ideally just institutions, then, we might have to accept that individuals and corporations have significant obligations to directly promote justice-relevant values in order to be able to account for highly plausible requirements of justice. It is an important advantage of the view that I have defended that it allows us to account for these requirements, and a serious disadvantage of Institutionalist views that they do not.

5. CONCLUSION

In this article, I have argued that some recent discussions of Rawlsian theory’s implications for business ethics have mischaracterized the question of whether, and if so in what sense, corporations are part of the basic structure of society. This question is properly understood as one about which slots into which laws affecting the internal functioning of corporations might be placed are part of the basic structure; and the answer that I have suggested is that all of them are. I then argued that once the structure of Rawlsian theory is clarified, we can see that its potential implications for the legal regulation of corporate governance arrangements are significant, while
it can have no implications with respect to how corporations ought to voluntarily behave. We have reason, however, to care in a fundamental way about, for example, the lack of opportunities for meaningful work, or the inadequate share of primary goods possessed by some citizens. Because of this, I have argued, we have reason to think that corporations do have justice-based reasons to directly promote the aims prescribed by the principles of justice. We therefore have reason to reject the view that the principles of justice do not, in principle, apply to the internal affairs of private associations such as corporations. The fact that they are not part of the Rawlsian basic structure does not, from the perspective of justice properly understood, matter.

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